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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,446	11/14/2003	T. Douglas Moser	TDMF121764	9381
26389 7590 02/22/2007 CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347			EXAMINER WEIER, ANTHONY J	
			ART UNIT 1761	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/22/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/714,446

Applicant(s)

MOSER ET AL.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11-17, 19-25 and 41-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-17, 19-25 and 41-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 8, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brick et al taken together with Oplinger et al, Applicant's own admission, FTC reference and either one of Singh et al and Ramanathan et al.

Brick et al discloses a predetermined interest in the particular size of Cicer bean desired (i.e. 54-50 seeds /oz), harvesting same by combine separating seed from plant residue, cleaning same by using air screen cleaners, seed conditioning (used for processing dry beans, i.e. dehydrating same), and packaging the final beans.

The claims further call for harvesting of green Cicer beans, specifically. Although Brick et al discloses the treatment of the traditional format of Garbanzo-type Cicer beans, it is known to harvest and depod, specifically, green Cicer beans by Applicant's own admission (pages 2 and 3). Oplinger et al further discloses the commercial consumption of Chickpea as a "green vegetable" (albeit less common), thus suggesting the alternative of green Chickpea harvesting. In addition, Singh et al and Ramanathan et al both further teach the harvesting of a green type of Cicer bean. It would have been

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obvious to one having ordinary skill in the art at the time of the invention to have treated green Cicer beans by the traditional method of treating Cicer beans in general, as disclosed by Brick et al as a matter of preference.

Although it appears that Brick et al employs seed conditioning for the purpose of preparing a dried bean product (as set forth above), if it is shown that this is not the case, the following should be noted. It is well known to employ such step in treating Cicer beans as taught, for example, by Oplinger et al with respect to Chickpeas. It would have been further obvious to one having ordinary skill in the art at the time of the invention to have dried the beans as a preservative measure to prevent insect and/or disease outbreaks during subsequent storage.

The claims further call for blanching the beans as a measure of preserving same. Blanching is a well known preserving methods with regard to Cicer bean treatment as taught, for example, by either one of Singh et al and Ramanathan et al, and, it would have been obvious to have incorporated such measure in conjunction with or as an alternative to the drying treatment set forth in Brick et al and/or Oplinger et al. With regard to the further claims determination of the particular time and temperature most effective in preserving the beans as it pertains to reducing enzyme activity, such would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at such amounts through routine experimental optimization.

It should be noted that the claims call for said green Cicer beans to be commercial processed. Brick et al further discloses commercial production and marketing of Cicer beans generally (page 6 and page 3 wherein the latter suggests

commercial appeal of certain varieties). Although, not specifically setting forth that green Cicer beans are being sold, it should be noted that any production for money is considered a commercial production whether it is done in a large factory setting or sold out of someone's basement. Since any legal product may be bought or sold, it would have been further obvious to have commercially produced same for potential profit as a matter of preference well known in the art. Oplinger et al discloses a suggestion that there exists a desire of the green Cicer beans. More specifically, by setting forth that "greenish....seeds are generally unacceptable," Oplinger et al is also suggesting that same **are also** acceptable to some, albeit a smaller number of consumers. In other words, the term "generally" does not put an absolute cap on acceptability of green seeds. Moreover, Oplinger discloses consumption of Cicer beans in **green** form (i.e. as a green vegetable; page 1).

3. Claims 14-16, 20-23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraph 4 further in view of Wood.

The claims further call for depodding the Cicer beans. Although it is considered likely that Brick et al depods said beans, it should be noted that Oplinger et al employs a screen size in separating beans by size, and since Oplinger et al relates to treatment of different beans including Desi-type which typically grow in pairs within pods, the separating treatment of Oplinger et al implies that the beans have been depodded in order to separate the seeds themselves by size. It would have been obvious to one having ordinary skill in the art at the time of the invention to have depodded the beans, in particular, out of necessity with respect to Oplinger et al in order to facilitate size

separation of individual beans.

The claims further call for employing a vibrating screen in removing depodded green Cicer beans (which would relate to size) from other harvested material. Vibrating screens for the purpose of size separation of bean materials is well known as taught, for example, by Wood (col. 3, lines 5-32). It would have been further obvious to have employed such conventional separation devices as a matter of preference depending on availability, cost, space allotted, etc.

Brick et al is silent regarding the amount of moisture content in the final bean product. However, Oplinger et al further teaches seed conditioning by way of drying said beans to 10-12% moisture, a preservative measure, before packaging. It would have been further obvious to one having ordinary skill in the art at the time of the invention to have dried the beans such extent to prevent insect and/or disease outbreaks during subsequent storage as further taught by Oplinger et al.

The claims further call for the use of a tenderometer and specific readings therein to determine the harvesting of the green Cicer beans of the instant invention. Applicant's own admission (pages 2 and 3) sets forth that it is known to harvest and depod green Cicer beans. Tenderometers are generally used in determining when the maturity of a bean as taught, for example, by the FTC reference. Clearly, one skilled in the art would have turned to tools such as tenderometers to aid in determining the time of harvest for the desired bean product. Applicant already admits that some parts of the world desire green Cicer beans which possess a certain degree of maturity. It would have been further obvious to have employed the tenderometer as tool for

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determining the particular degree of maturity of a bean and use same to facilitate the time of harvesting the desired bean (in this case a green Cicer bean). As for the particular reading in deciding same, such determination would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at such values through routine experimental optimization depending on the particular stage of bean desired.

4. Claims 7 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraph 4 further in view of Rockland et al.

The claims further call for freezing the beans as a measure of preserving same. Freezing is a well known preserving methods with regard to Cicer bean treatment as taught, for example, by Rockland et al, and, it would have been obvious to have incorporated such measures in conjunction with or as an alternative to the drying treatment set forth in Brick et al and/or Oplinger et al.

5. Claims 12, 13, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the claims as set forth in either one of paragraph 4 or 5 further in view of Gupta.

The claims further call for collecting the green Cicer beans in water and removing any material floating on the top. However, such floatation step of separating desired beans from unwanted material such as bean pods is well known as taught, for example, by Gupta (e.g. Abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed such separation step as a matter of preference in providing a more isolated, quality product.

Claim 13 further calls for repeating process steps. It would have been further obvious to have repeated steps to increase the degree of resulting effect desired with respect to each step.

6. Claims 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraph 4 in view of Wood and Burling et al.

The claims further call for employing a vibrating screen with a predetermined vibration rate in removing green Cicer beans (which would relate to size) from other harvested material. Vibrating screens for the purpose of size separation of bean materials is well known as taught, for example, by Wood (col. 3, lines 5-32). It would have been further obvious to have employed such conventional separation devices as a matter of preference depending on availability, cost, space allotted, etc. It is expected that the vibrating rate was predetermined as a standardized rate among all of the commercial available vibrating screens with respect to Wood. If it is shown that the rate for vibrating screens produced in view of Wood would not have been predetermined, it would have been further obvious to have provided a single rate that is the same in all the vibrating screens of Wood to provide a uniform commercial product.

The claims further call for said screen to be adjustable by a plurality of spaced louvers wherein said plurality of louvers are adjusted based on the relative sizes of beans to be processed. Burling et al teaches a system of separating by size bean material in a device wherein screen plates may be adjusted in width of openings to facilitate a desired separation (e.g. col. 2, lines 8-22). Although Burling et al does not specifically refer to louvers for doing same, the particular apparatus of Burling et al

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provides the same method action. It would have been further obvious to have incorporated such step to provide more controlled separation options by size.

Response to Arguments

7. Applicant's arguments filed 11/22/06 have been fully considered but they are not persuasive and have been addressed in view of the rejections above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

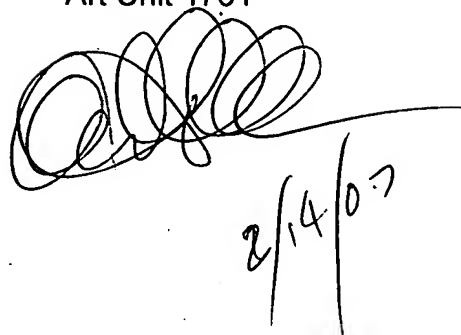
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Anthony Weier
February 14, 2007

Anthony Weier
Primary Examiner
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2/14/07